

ARTICLE 20:06

INSURANCE

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20:06:10:08.03. Short term major medical advertising disclosure. No advertisement or solicitation of short term major medical insurance may be used in this state unless the following disclosure statement is prominently displayed in that advertisement or solicitation: "This short term major medical policy is nonrenewable."

No short term major medical policy may be sold in this state unless the following separate disclosure in bold 14 point type is signed and acknowledged by the applicant:

"This short term major medical policy is nonrenewable. ~~This policy could cause me to lose valuable rights under the Health Insurance Portability and~~

~~Accountability Act. I understand that if I purchase this policy and become seriously ill or disabled I would be ineligible for the risk pool and could be uninsurable."~~ This policy has exclusions such as preexisting conditions and does not provide all coverage as provided for by the Patient Protection and Affordable Care Act."

If the application is taken by an agent, the agent is responsible for forwarding this signed disclosure to the insurer. For direct marketed solicitations, the insurer must provide this disclosure with the application. No insurer may issue a short term major medical policy unless a signed disclosure complaint with this section is received. If the transaction involves a replacement, the agent or, if forwarded by the agent to the insurer, the insurer must keep documentation in accordance with SDCL 58-1-26 that subdivision 20:06:10:08.02 has been complied with.

Source: 33 SDR 107, effective December 26, 2006; 38 SDR 116, effective January 10, 2012.

General Authority: SDCL 58-33A-7(14).

Law Implemented: SDCL 58-33A-2, 58-33A-8, 58-33A-10.

20:06:23:02. Standards for determining the hazardous financial condition of an insurer.

The director may consider any one of the following standards to determine whether the continued operation of an insurer transacting an insurance business in this state might be hazardous to the policyholders, creditors, or the general public:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries;

(2) ~~Failing any ratios set by the~~ The National Association of Insurance Commissioners Insurance Regulatory Information System and its related other financial analysis solvency tools and reports;

(3) ~~The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income could lead to an impairment of capital and surplus;~~ Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, the investment earnings on such assets and the considerations anticipated to be received and retained under such policies and contracts;

(4) ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;~~ The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow, the classes of business written, and the financial condition of the assuming reinsurer;

(5) ~~The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written, as well as the financial condition of the assuming reinsurer;~~ Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of

the insurer's remaining surplus as regards policyholders in excess of the minimum required in SDCL 58-6-23;

(6) ~~The insurer's operating loss in the last twelve month period or any short period of time, including net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus in excess of the minimum required in SDCL 58-6-23;~~ Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required in SDCL 58-6-23;

(7) ~~Whether any parent, affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;~~ Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or is delinquent in payment of monetary or other obligations, that may affect the solvency of the insurer;

(8) Contingent liabilities, pledges, or guarantees which either individually or collectively involve a total amount which, in the opinion of the director, may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer. ~~A controlling person is any person who, directly or indirectly, controls an insurer and for any compensation, commission, or other thing of value acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured;~~

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in such positions;

(12) Whether management of an insurer has failed to respond to inquiries ~~about~~ relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;

(13) ~~Whether management of an insurer has filed a false or misleading sworn financial statement, has released false or misleading financial statements to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;~~ Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the director;

(14) ~~Whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;~~ Whether the insurer has filed a false or misleading sworn financial statement, has released false or misleading financial statements to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(15) ~~Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems; or~~ Whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) ~~There is a rating drop by a nationally recognized rating organization.~~ Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) Whether the insurer has established financial reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice;

(18) Whether the insurer persistently engages in material under reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

(20) Whether there is a rating drop by a nationally recognized rating organization; or

(21) Any other finding determined by the director to be hazardous to the insurer's policyholders, creditors, or general public.

Source: 19 SDR 160, effective April 27, 1993.

General Authority: ~~SDCL 58-4-1~~, 58-4-39.

Law Implemented: SDCL 58-4-39.

20:06:56:04. Substantially equal benefits. Plans must provide for benefits that are substantially equal to the essential health benefits-benchmark plan including:

- (1) Covered benefits listed in § 20:06:56:02;
- (2) Limitations on coverage including coverage of benefit amount, duration, and scope;
and
- (3) Prescription drug benefits described in § ~~20:06:56:07~~ 20:06:56:08.

Source: 39 SDR 203, effective June 10, 2013.

General Authority: SDCL 58-17-87, 58-18-79.

Law Implemented: SDCL 58-17-87, 58-18-79, 58-18-80.

Chapter 20:06:57

SELF-FUNDED MULTIPLE EMPLOYER TRUSTS

Section

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20:06:57:18. Applicability of chapter.

20:06:57:01. Definitions.

- (1) “Multiple employer trust,” a self-funded entity which obtains authorization pursuant to SDCL 58-18-88 and this chapter to operate in South Dakota.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57:02. Authorization. No person may establish or maintain a self-insured employee benefit plan for the purpose of providing health insurance which is a multiple employer trust in this state unless the multiple employer trust first obtains and maintains authorization pursuant to SDCL 58-18-88 and this chapter.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57:03. Application for authorization. A person applying for authorization pursuant to SDCL 58-18-88 shall submit a plan of operation with the director. The application and plan of operation shall include the following:

- (1) A business plan including a copy of all contracts or other instruments which the multiple employer trust proposes to make with or sell to its members, a copy of the plan description, and the printed materials to be used in the solicitation of members;

- (2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries;
- (3) A current list of all members of the employer group or association sponsoring the multiple employer trust and a description of the relationship among the employers which serves as the basis for the formation of the association or employer group;
- (4) A description of the activities of the association or group of employers on behalf of its members other than the sponsorship of the multiple employer trust;
- (5) Current financial statements of the multiple employer trust which shall include at a minimum balance sheets, income statement, cash flow statement, and a detailed listing of assets;
- (6) An actuarial opinion prepared, signed, and dated by a member of the American Academy of Actuaries which states that appropriate loss and loss adjustment reserves have been established, that adequate premiums are being charged, and that the association multiple employer trust is operating in accordance with sound actuarial principles;
- (7) A statement from an authorized representative of the applicant which certifies all of the following:
 - (a) The multiple employer trust is administered by an authorized insurer or an authorized third-party administrator;
 - (b) The multiple employer trust is eligible for authorization pursuant to SDCL 58-18-88 and 58-18B-59;
 - (c) The association or group of employers sponsoring the multiple employer trust is engaged in substantial activity for its members other than sponsorship of an employer benefit plan; and

- (d) The association is a nonprofit entity organized and authorized to do business under applicable South Dakota law;
- (8) A statement from an authorized representative of the applicant which certifies that the provisions of SDCL 58-18-88 have been met;
- (9) A statement from the applicant that, to the best of its knowledge and belief, the multiple employer trust is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
- (10) A description of the mechanism approved by the director to ensure that claims will be paid in the event that a member of the multiple employer trust is unable to comply with the multiple employer trust's contribution requirements;
- (11) A copy of the most recent Form M-1 filed by the multiple employer trust with the U.S. Department of Labor, Pension and Welfare Benefits Administration, if applicable; and
- (12) Any additional information requested by the director.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89, 58-18B-59.

20:06:57:04. Investigation of application. The director shall investigate the application and supporting documents submitted by the applicant pursuant to SDCL 58-18-88 and this chapter and may conduct any investigation which the director may deem necessary and to examine under oath any persons interested in or connected with the multiple employer trust.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57:05. Issuance of authorization. The director may issue an authorization to the multiple employer trust upon finding that the applicant multiple employer trust has met all requirements of SDCL 58-18-88 and this chapter. The director shall notify denied applicants of the reasons for denial. An unsuccessful applicant may file a new application for an authorization at any time, but not within 60 days of a previous denial by the director.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57:06. Report to director of modification. A multiple employer trust shall immediately notify the director of any material change in ownership, control, or other fact or circumstance that may affect qualification for an authorization in this state.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-89.

20:06:57:07. Surplus. Unless otherwise provided in this section, a multiple employer trust shall deposit with an organization or trustee meeting the requirements of SDCL chapter 58-7 cash, securities, or any combination of these that is acceptable in the same amount provided in SDCL 58-6-23 for insurers. The director may increase the amount required to be deposited based on the director's written determination that such an increase is necessary to adequately secure any

potential liability of the multiple employer trust to its enrollees, subject to SDCL chapter 58-29B proceedings.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-6-23, 58-7, 58-18-88, 58-18-89, 58-29B.

20:06:57:08. Reserves and stop-loss coverage.

- (1) A multiple employer trust shall have at all times aggregate excess stop-loss coverage providing the multiple employer trust with coverage with an attachment point which is not greater than:
 - (a) 120 percent of actuarially projected losses on a calendar-year basis; or
 - (b) Five percent of annual expected claims for purposes of this section and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this section as determined by sound actuarial principles;
- (2) A multiple employer trust shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles;
- (3) A multiple employer trust shall set premiums to fund at least 100 percent of the multiple employer trust's actuarially projected losses plus all other costs of the multiple employer trust;
- (4) All coverage obtained pursuant to this section shall contain a provision allowing for at least 90 days' notice to the director upon cancellation or nonrenewal of the contract;

(5) No contract or policy of per occurrence or aggregate excess insurance may be recognized in considering the ability of an applicant to fulfill its financial obligations under this section, unless such contract or policy is issued by a company that is:

- (a) Licensed to transact business in this state; or
- (b) Authorized to do business in this state as an accredited reinsurer.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57:09. Annual report. A multiple employer trust shall file an annual report on or before the first day of March. The annual reports must be submitted for the preceding calendar year and must be verified by at least two of the trust's principal officers. The annual report shall be on the form designated by the director. The annual report shall be completed using statutory accounting practices and shall include information required by the director. The director may request additional reports and information from a multiple employer trust as deemed necessary to supplement the annual report. The annual report shall include:

- (1) An independent actuarial opinion prepared in conformance with SDCL chapter 58-26 and ARSD chapter 20:06:37. The director may conduct an independent actuarial review of a multiple employer trust in addition to the actuarial opinion required by this rule. The cost of any actuarial review shall be paid by the multiple employer trust.
- (2) A certificate of compliance signed and dated by the appropriate official representing the multiple employer trust that certifies the following:

- (a) That the plan meets the requirements of this rule and the applicable provisions of the South Dakota statutes and regulations;
- (b) That an independent actuarial opinion is attached to the certificate which attests to the adequacy of reserves, rates, and the financial condition of the plan. The actuarial opinion must include, a brief commentary about the adequacy of the reserves, rates, and other financial condition of the plan, a test of the prior year's claim reserve, a brief description of how the reserves were calculated, and whether the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a member of the American Academy of Actuaries;
- (c) That a written complaint procedure for reviewing and resolving grievances from covered persons in accordance with SDCL chapter 58-17I has been implemented. The certificate shall list the number of complaints filed by participants under the written complaint procedure and the percentage of participants filing written complaints in the prior calendar year; and
- (d) That the multiple employer trust has contracted with an insurer authorized to do business in this state or with a third-party administrator who holds a current license or registration pursuant to SDCL chapter 58-29D.

Source:

General Authority: SDCL 58-18-89, 58-17I-16, 58-29D-34.

Law Implemented: SDCL 58-18-89, 58-17I, 58-26, 58-29D.

20:06:57:10. Contracts by multiple employer trusts. All contracts issued by a multiple employer trust shall comply with the following:

- (1) Each multiple employer trust application for insurance and each policy and certificate issued by a multiple employer trust shall contain in ten-point type on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a multiple employer trust. Multiple employer trusts are not subject to all of the insurance laws and regulations of South Dakota.

- (2) A multiple employer trust must offer on a guarantee-issue basis health benefits to all individuals who qualify as members or enrollees of the association.
- (3) A multiple employer trust may offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, or disability benefits.
- (4) All contracts or policies issued by a multiple employer trust shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996, including guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

____ Source:

____ General Authority: SDCL 58-18-89.

____ Law Implemented: SDCL 58-15, 58-18-88, 58-18-89.

20:06:57:11. Disclosure. A multiple employer trust shall make the following disclosure to each employer member of the multiple employer trust:

The benefits and coverages described herein are provided through a self-insured trust fund established and funded in full or in part by a group of employers. It is not a licensed insurance company.

____ Source:

____ General Authority: SDCL 58-18-89.

____ Law Implemented: SDCL 58-18-89.

20:06:57:12. Agreements and management contracts. Any agreement between a multiple employer trust and any administrator, service company, or other entity shall be filed with the director for approval.

____ Source:

____ General Authority: SDCL 58-18-89.

____ Law Implemented: SDCL 58-18-89.

20:06:57:13. Examination. Each multiple employer trust is subject to examination by the director in accordance with SDCL chapter 58-3. Chapter 58-3 governs all aspects of the examination. The director may make an examination of a multiple employer trust as often as the director considers it necessary, but not less frequently than once every five years. The expenses of the examination shall be assessed against the multiple employer trust being examined in a manner in which expenses of examinations are assessed against an insurance company under SDCL chapter 58-3. Multiple employer trusts are subject to the examination fund assessment pursuant to SDCL 58-3-3.1.

____ Source:

General Authority: SDCL 58-18-89, 58-3-26.

Law Implemented: SDCL 58-3, 58-18-88, 58-18-89.

20:06:57:14. Independent Audit. Multiple employer trusts are subject to SDCL chapter 58-43.

Source:

General Authority: SDCL 58-18-89, 58-43-24.

Law Implemented: SDCL 58-18-88, 58-18-89, 58-43.

20:06:57:15. Trade practices. Multiple employer trusts are subject to applicable provisions of the Unfair Trade Practices Act, SDCL chapter 58-33.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89, 58-33.

20:06:57:16. Insolvency. The provisions of SDCL chapter 58-29B apply to multiple employer trusts which are considered insurers for purposes of that chapter. Multiple employer trusts are subject to SDCL chapter 58-29C, including the assessment provided therein.

Source:

General Authority: SDCL 58-18-89.

Law Implemented: SDCL 58-18-88, 58-18-89, 58-29B, 58-29C.

20:06:57:17. Minimum coverage standards for health policies. The minimum coverage standards for health policies offered by multiple employer trusts are those of a bronze plan as delineated in ARSD 20:06:56:11.

____ Source:

____ General Authority: SDCL 58-18-89.

____ Law Implemented: SDCL 58-18-88, 58-18-89.

20:06:57: 18. Applicability of chapter. This chapter does not apply to fully-insured entities.

____ Source:

____ General Authority: SDCL 58-18-89.

____ Law Implemented: SDCL 58-18-88, 58-18-89.